

November 1987

Digests of Unpublished
Decisions of the
Comptroller General
of the United States



United States General Accounting Office

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PREFACE

This publication is one in a series of monthly pamphlets entitled "Digests of Unpublished Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code 3529 (formerly 31 U.S.C. 74 and 82d). Decisions in connection with claims are issued in accordance with 31 U.S. Code 3702 (formerly 31 U.S.C. 71). Decisions on the validity of contract awards are rendered pursuant to the Competition in Contracting Act, 98 Pub. L. 369, July 18, 1984.

Decisions in this pamphlet are presented in digest form and represent approximately 90 percent of the total number of decisions rendered annually. Full text of these decisions are available through the circulation of individual copies and should be cited by the appropriate file number and date, e.g., B-219654, Sept. 30, 1986.

The remaining 10 percent of decisions rendered are published in full text. Copies of these decisions are available through the circulation of individual copies, the issuance of monthly pamphlets and annual volumes. Decisions appearing in these volumes should be cited by volume, page number and year issued, e.g., 65 Comp. Gen. 624 (1986).



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Delayed Distribution - Released

APPROPRIATIONS/FINANCIAL MANAGEMENT

APPROPRIATIONS/FINANCIAL MANAGEMENT

Judgment Payments

B-226517 Oct. 9, 1987

Judgment Proceeds

Use

State of Oregon plans to propose using Stripper Well oil overcharge funds as matching funds in purchasing abandoned branch rail line between Portland and Lake Oswego, Oregon, to be used ultimately for a light rail transit line between the two sites, where population growth and business development are increasing rapidly. Planned proposal appears to be permissible restitutionary use of funds for mass transit purposes, as contemplated by Stripper Well Final Settlement Agreement (In re: The Department of Energy Well Litigation, MDL No. 379 (D. Kan., July 7, 1986)), and by Chevron consent order referred to therein.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-223026 Nov. 3, 1987

Purpose Availability

Attorney Fees

The Civil Service Reform Act, enacted in 1978, amended the Back Pay Act to authorize the award of attorney fees to prevailing employees. However, by operation of section 902(b) of the Civil Service Reform Act, an award of attorney fees cannot be made to an employee whose appeal of an adverse action was pending at the time of enactment of that Act.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-226214 Nov. 3, 1987

Relief

Physical Losses

Internal Revenue Service official accountable for a loss of tax collections is relieved from liability under 31 U.S.C. 3527(a) when the record indicates that the loss was directly attributable to a machine malfunction and occurred without fault or negligence on the part of the accountable officer.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-229126 Nov. 3, 1987

Certifying Officers

Relief

Illegal/Improper Payments

Overpayments

Relief is granted where record indicates that procedures had been implemented and communicated to staff which if properly followed would have prevented improper payment.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-229239 Nov. 3, 1987
Disbursing Officers
Relief
Illegal/Improper Payments
Substitute Checks

Relief is granted Army disbursing official under 31 U.S.C. 3527(c) from liability for improper payment resulting from payee's negotiation of both original and recertified checks. Proper procedures were followed in the issuance of the recertified check, there was no indication of bad faith on the part of the disbursing official and subsequent collection attempts are being pursued.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability B-223833 Nov. 5, 1987
Purpose Availability
Necessary Expenses Rule

Funding of wage survey may be properly considered a necessary expense in achieving the objectives authorized under FY 1984 Program Administration appropriation for Labor Department's Employment and Training Administration.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability
Time Availability
Time Restrictions
Fiscal-year Appropriation

Labor Department entered into Economy Act agreement with Agriculture Department in September 1984 for latter to perform farm wage survey. Survey was performed in-house by Agriculture personnel in October 1984. Cost was charged to Labor's FY 1984 appropriations. Under 31 U.S.C. 1535(d), since work was performed in FY 1985, Labor should have deobligated FY 1984 funds and charged cost to FY 1985 appropriations.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-229197 Nov. 10, 1987
Disbursing Officers
Relief
Illegal/Improper Payments
Substitute Checks

GAO has delegated to the Army the authority to grant relief to accountable officers in duplicate payment cases involving the issuing or certifying of a substitute or recertified check drawn for pay and allowances of civilian and military personnel in the amounts of \$750 or less. B-214372, October 9, 1987. The amount involved here is under \$750 and therefore is returned to the Army for administrative resolution in accordance with the statutory standards of 31 U.S.C. 3527(c) and applicable Comptroller General decisions.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-229271 Nov. 12, 1987
Certifying Officers
Relief
Illegal/Improper Payments
Substitute Checks

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers
Disbursing Officers
Relief
Illegal/Improper Payments
Substitute Checks

GAO has delegated to the Army the authority to grant relief to accountable officers in duplicate payment cases involving the issuing or certifying of a substitute or recertified check drawn for pay and allowances of civilian and military personnel in the amounts of \$750 or less. B-214372, October 9, 1987. The amount involved here is under \$750 and therefore is returned to the Army for resolution in accordance with the statutory standards of 31 U.S.C. 3527(c) and applicable Comptroller General decisions.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-229272 Nov. 13, 1987

Disbursing Officers

Relief

Illegal/Improper Payments

Substitute Checks

GAO has delegated to the Army the authority to grant relief to accountable officers in duplicate payment cases involving the issuing or certifying of a substitute or recertified check drawn for pay and allowances of civilian and military personnel in the amounts of \$750 or less. B-214372, October 9, 1987. The amount involved here is under \$750 and therefore is returned to the Army for resolution in accordance with the statutory standards of 31 U.S.C. 3527(c) and applicable Comptroller General decisions.

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers B-229253 Nov. 17, 1987

Certifying Officers

Relief

Illegal/Improper Payments

Substitute Checks

APPROPRIATIONS/FINANCIAL MANAGEMENT

Accountable Officers

Disbursing Officers

Relief

Illegal/Improper Payments

Substitute Checks

GAO has delegated to the Army the authority to grant relief to accountable officers in duplicate payment cases involving the issuing or certifying of a substitute or recertified check drawn for pay and allowances of civilian and military personnel in the amounts of \$750 or less. B-214372, October 9, 1987. The amount involved here is under \$750 and therefore is returned to the Army for resolution in accordance with the statutory standards of 31 U.S.C. 3527(c) and applicable Comptroller General decisions.

CIVILIAN PERSONNEL

CIVILIAN PERSONNEL

B-223026 Nov. 3, 1987

Compensation

Overtime

Eligibility

Burden of Proof

An employee who was wrongfully separated and seeks overtime as part of a backpay award must establish either that he earned overtime prior to the unjustified separation or that similarly situated employees earned overtime during the period of unjustified separation. Documentation that a similarly situated employee earned overtime several months after the end of the separation period is not sufficient to establish an entitlement to overtime as part of the backpay award.

CIVILIAN PERSONNEL

Compensation

Retroactive Compensation

Adverse Personnel Actions

Travel Expenses

Reimbursement

A wrongfully separated employee who is later ordered reinstated by the Merit Systems Protection Board (MSPB) is not entitled to reimbursement of expenses for travel to consult with his attorney in connection with the MSPB appeal. However, the employee may be reimbursed for travel to attend the MSPB hearing.

CIVILIAN PERSONNEL

B-223026 Con't

Compensation

Nov. 3, 1987

Retroactive Compensation

Promotion

Eligibility

Burden of Proof

A former GS-11 employee who was wrongfully separated and who seeks a retroactive promotion to GS-12 as part of his backpay award has established prima facie entitlement to promotion where (1) his former position was advertised at the GS-12 level on the day after his separation and (2) he was the only applicant rated highly qualified for the position. Since the agency has not offered any evidence to rebut the employee's prima facie showing that he would have been promoted but for his unjustified separation, backpay should be calculated at the GS-12 level.

CIVILIAN PERSONNEL

Travel

Lodging

Expenses

Reimbursement

CIVILIAN PERSONNEL

Travel

Temporary Duty

Travel Expenses

Return Travel

Reimbursement

An employee on a long-term TDY assignment may be paid lodging expenses at other TDY worksites that he occasionally visited. However, the employee may not be paid lodging expenses for occasional return trips to his permanent duty station.

CIVILIAN PERSONNEL

B-223026 Con't

Travel

Nov. 3, 1987

Temporary Duty

Miscellaneous Expenses

Reimbursement

No authority exists to reimburse an employee who purchases a residence at a long-term TDY location for the cost of installing a dryer at that residence.

CIVILIAN PERSONNEL

Travel

Temporary Duty

Travel Expenses

Privately-owned Vehicles

Mileage

Agencies have discretion over the authorization of mileage reimbursement for an employee's local travel within a TDY area. In the exercise of this discretion an agency may properly limit TDY local area mileage to travel between the employee's lodgings and worksite.

CIVILIAN PERSONNEL

Travel

Travel Expenses

Documentation Procedures

Burden of Proof

Submission of fraudulent travel vouchers for a temporary duty (TDY) assignment taints each day covered by the vouchers and disqualifies the employee from any expense reimbursement for each such day. An employee cannot avoid this result by submitting corrected vouchers after it has been determined that the original vouchers were fraudulent.

CIVILIAN PERSONNEL**B-225229 Nov. 3, 1987****Compensation****Severance Pay****Eligibility****Involuntary Separation****Determination**

A former employee of the Mine Safety and Health Administration who declined to accompany her activity when it moved from Princeton to Pineville, West Virginia, was allowed to resign under involuntary conditions in lieu of transferring to Pineville. She is not entitled to severance pay under the provisions of 5 U.S.C. 5595 and the implementing regulations since the agency determined that Princeton and Pineville are in the same commuting area. We will not overturn an agency's determination on commuting area unless that determination is arbitrary, capricious, or clearly erroneous. Where the agency's determination that Princeton and Pineville were in the same commuting area is based upon the commuting patterns of other employees transferred earlier, we cannot say that the agency's determination was arbitrary, capricious, or clearly erroneous.

CIVILIAN PERSONNEL**B-226271 Nov. 5, 1987****Relocation****Residence Transaction Expenses****Reimbursement****Eligibility****New Residence Construction**

A transferred employee constructed a residence at his new permanent station rather than purchase an existing residence. The expenses authorized by paragraph 2-6.2d of the Federal Travel Regulations to be reimbursed are those which are comparable to expenses incurred in connection with the purchase of an existing residence. Since the expenses incurred as a result of permanent financing of the residence are most representative of the expenses incurred to purchase an existing residence, the employee's entitlement should be primarily based on the expenses attendant to that settlement.

CIVILIAN PERSONNEL **B-226271 Con't**
Relocation **Nov. 5, 1987**
Residence Transaction Expenses
Reimbursement
Eligibility
New Residence Construction

A transferred employee constructed a residence at his new permanent station. Although the expenses authorized by paragraph 2-6.2d of the Federal Travel Regulations (FTR) to be reimbursed are those usually incurred incident to the securing of permanent financing upon completion of the residence, other expenses incurred prior to permanent financing also may be reimbursed so long as they are not a duplication of an expense item already allowed incident to that permanent financing, an expense uniquely applicable to the construction process, or a nonreimbursable item listed under FTR para. 2-6.2d(2).

CIVILIAN PERSONNEL **B-227222 Nov. 5, 1987**
Leaves of Absence
Military Leave
Accrual
Eligibility

A civilian Federal employee, who is a member of the reserves, is entitled to accrue and carry over 15 days of military leave each fiscal year in spite of the fact that he did not request such leave and regardless of whether he was a member of an active or inactive reserve unit. The military leave statute, 5 U.S.C. 6323 (1982), makes no distinction for accrual purposes between the employee's participation in an active or inactive reserve unit.

Travel

Actual Subsistence Expenses

Reimbursement

Amount Determination

An employee in a travel status in April and May 1984 was authorized reimbursement on an actual expense basis, and he claimed meal expenses in excess of the agency guideline permitting reimbursement up to 45 percent of the daily maximum per diem rate, as reasonable, without requiring further justification. The employee later reduced his claim to an amount equal to the 45 percent guideline, but again did not itemize his daily meal costs. The agency, recognizing that he had incurred some meal costs, reimbursed him less than 45 percent of the applicable rate. The employee claims additional reimbursement, arguing that since his revised claim did not exceed 45 percent of maximum per diem, he is not required to itemize or further justify his expenses. His claim may not be paid since paragraphs 1-8.5 and 1-11.5(b)(2) of the Federal Travel Regulations (FTR) require subsistence expense itemization to at least permit agency review. While written agency guidelines may authorize, as reasonable, subsistence reimbursement up to 45 percent of a maximum per diem rate, such guidelines do not supersede other requirements of law or statutory regulations. Therefore, we concur with the agency action to require the employee to comply with FTR requirements to support his additional claim.

CIVILIAN PERSONNEL**B-227380 Nov. 13, 1987****Relocation****Residence Transaction Expenses****Leases****Termination Costs****Reimbursement**

A transferred employee sold a mobile home, which he had used as his residence at his old station, approximately 1 year after his transfer. He seeks reimbursement for the space rental charges during that 1-year period as a lease settlement expense on basis that his effort to sell constituted a bona fide attempt to terminate the lease. His claim is denied. The mobile home space rental was on a month-to-month tenancy and could have been terminated by moving his mobile home any time with 30-days notice. Since he took no action to terminate the lease, he did not incur any lease-breaking expense, and the continuing space rental charges are nonreimbursable. Daniel J. Price, B-210918, March 20, 1984.

CIVILIAN PERSONNEL**Relocation****Residence Transaction Expenses****Miscellaneous Expenses****Reimbursement**

A transferred employee sold a mobile home which he used as a residence at his old station. He personally financed the sale for a period not to exceed 2 years as an accommodation to the buyer. Because the employee still owed money on the mobile home, he established a collection account (similar to an escrow account) with his lender bank so that the buyer could make monthly payments to this collection account and the bank could apply the funds toward the employee's own mortgage payments. Since there is no showing that such an account was required by law or local practice, it must be regarded as being merely for the convenience of both parties and not directly related to the sale itself. The fee for establishing the collection account may not be reimbursed. Arthur L. Harding, B-211794, September 27, 1983.

CIVILIAN PERSONNEL**B-226362 Nov. 23, 1987****Relocation****Temporary Quarters****Actual Subsistence Expenses****Reimbursement****Eligibility**

Employee of the Veterans Administration is not entitled to temporary quarters subsistence expenses while renting and occupying the house he intends to purchase as his family's residence at his new duty station. His intent during the period for which he claims temporary quarters subsistence expenses was to occupy the house permanently. The fact that its purchase was subject to approval of financing based upon his wife's obtaining employment does not change its character as the employee's permanent quarters. Savings to the Government may not serve as a basis for holding otherwise.

CIVILIAN PERSONNEL**B-226666 Nov. 23, 1987****Relocation****Household Goods****Commuted Rates****Reimbursement****Amount Determination**

A transferred employee was authorized shipment and storage of his household goods on a commuted rate basis, and he claims reimbursement for the difference between the higher actual published tariff costs on the storage portion and the lower commuted rate published in GSA Bulletin FPMR A-2. The claim is denied since an administrative determination has been made to use the commuted rate basis, and payment can only be authorized on that basis.

CIVILIAN PERSONNEL**B-226010 Nov. 30, 1987****Relocation****Residence Transaction Expenses****Mortgage Insurance****Reimbursement**

Two transferred employees claim reimbursement for mortgage insurance they were required to pay at settlement to protect against default on FHA-insured loans. Reimbursement of this type of charge is specifically precluded by Federal Travel Regulations (FTR) para. 2-6.2d(2)(a). In addition, mortgage insurance, to the extent it is deemed a financing charge incident to the securing of a mortgage loan, may not be reimbursed under FTR para. 2-6.2d(2)(e).

CIVILIAN PERSONNEL**B-226555 Nov. 30, 1987****Relocation****Residence Transaction Expenses****Reimbursement****Eligibility****Residency**

An employee assigned to a state government agency under the Intergovernmental Personnel Act may not be reimbursed real estate expenses for purchase of a home at the location of the assignment, since real estate expenses are not specifically allowed by the act and the assignment location is considered only a temporary duty station not qualifying the employee for relocation expenses.

CIVILIAN PERSONNEL**B-226569 Nov. 30, 1987****Travel****Local Travel****Travel Expenses****Reimbursement**

An agency may allow reimbursement of local travel expenses for visits to the agency's Employee Assistance Program Counselor located at another agency where a determination is made that the travel is advantageous to the government. While there is no provision regarding travel expenses in the statutes or regulations authorizing the Program, under the Federal Travel Regulations the Federal Communications Commission may allow reimbursement based upon its determination that payment would be in the government's interest. The approval of the employee's reimbursement voucher by the appropriate official in accordance with the agency's regulations is sufficient to constitute an agency determination that the travel was advantageous to the government.

CIVILIAN PERSONNEL**B-227489 Nov. 30, 1987****Compensation****Overtime****Eligibility****Travel Time**

An employee claims overtime pay for hours spent traveling to and from temporary duty where the travel was found to have resulted from an event which could have been scheduled or controlled administratively. Our prior denial of his claim is affirmed since the employee has not provided sufficient factual or legal support for the proposition that his traveltime both to and from temporary duty should qualify as hours of employment under the requirements of 5 U.S.C. 5544(a) (1982).

MILITARY PERSONNEL

MILITARY PERSONNEL

B-219850 Nov. 23, 1987

Travel

Overseas Travel

Domestic Sources

Air Carriers

General statements by a service member and his travel agent that U.S. air carrier service from Honolulu to Tokyo en route to Okinawa was unavailable on the date the member traveled do not provide adequate justification for use of a foreign air carrier when the transportation officer has denied certification for such travel. Adequacy of justification for use of a foreign carrier is determined in accordance with the Fly America Act standards of unavailability set forth in Joint Travel Regulations, Vol. 1, para. M2150. Absent certification of justification under those standards by the transportation or other appropriate officer, reimbursement for travel may not be made. Sergeant Jeffry A. Collins, USAF, B-219850, February 19, 1986, affirmed.



PROCUREMENT

PROCUREMENT

**Sealed Bidding
Unbalanced Bids
Materiality
Responsiveness**

**B-228044 Nov. 2, 1987
87-2 CPD 426**

The apparent low bid on a contract for a 1-year base period and two-option years is not materially unbalanced where no reasonable doubt exists that acceptance of the bid--which has a front-loaded base period price to reflect initial capital outlays and becomes low in the eighth month of the first option year--will result in the lowest ultimate cost to the government.

PROCUREMENT

**Bid Protests
GAO Procedures
Pending Litigation
GAO Review**

**B-228047; B-228904
Nov. 2, 1987
87-2 CPD 427**

The General Accounting Office (GAO) will dismiss a protest where the matter is the subject of litigation. Where, however, the court stays the proceedings until the issuance of a GAO decision, GAO will provide the court with its views on the protest.

PROCUREMENT

**Competitive Negotiation
Alternate Offers
Acceptance
Propriety**

Where protester had requested the Department of Labor (DOL) approval in conforming a new labor classification but DOL had denied the request, the agency reasonably relied on the denial and properly found alternate proposals based on the rejected classifications unacceptable even though the protester was attempting to have the rejection overruled.

Agencies need not hold discussions with an offeror whose proposals are not acceptable or susceptible of being made acceptable.

GAO will not consider protests regarding the propriety of a manufacturer's alleged limitation on the availability of its products.

Absent preferential treatment or unfair action by the procuring agency, the agency is not required to equalize the competitive advantage enjoyed by the original manufacturer.

Contracting officer did not abuse his discretion in deciding not to set aside a particular procurement for small business concerns, even though the service previously was acquired by set-aside, where the record shows that he reasonably did not expect a sufficient number of offers from responsible small business concerns and award at a reasonable price.

B-228050 Con't

Nov. 2, 1987

Minimum Needs Standards

Competitive Restrictions

Brand Name Specifications

Where protester failed to rebut reasons offered by agency for determining that its minimum needs could only be met by brand name X-ray tubes, protest is denied.

B-228190.3 Nov. 2, 1987

87-2 CPD 430

Administrative Policies

Violation

GAO Review

Alleged violation of a Department of the Air Force regulation setting forth internal policies does not provide a valid basis for protest.

PROCUREMENT

Bid Protests

GAO Procedures

Purposes

Competition Enhancement

General Accounting Office will not review a protest that specifications are not restrictive enough to meet the government's minimum needs.

PROCUREMENT
Bid Protests
GAO Procedures
Preparation Costs

B-228441 Nov. 2, 1987
87-2 CPD 431

PROCUREMENT
Sealed Bidding
Bids
Preparation Costs

Claim for payment of bid preparation costs and costs of pursuing the protest, including attorney's fees, is dismissed where there is no finding by this Office that a solicitation, proposed award or award does not comply with a statute or regulation.

PROCUREMENT
Noncompetitive Negotiation
Contract Awards
Sole Sources
Propriety

Protester's assertion that award to manufacturer of equipment designated in the solicitation to be used in contract resulted in de facto sole-source award is dismissed. The contract consisted of the equipment and work to be performed in installation of the system and nothing prevented the protester and other prospective bidders from bidding on the contract as a whole.

PROCUREMENT
Sealed Bidding
Bid Guarantees
Responsiveness
Letters of Credit
Adequacy

B-228752.2 Nov. 2, 1987
87-2 CPD 432

Where letter of credit submitted as a bid guarantee contains conditional language which creates uncertainty as to whether the letter would be enforceable against the issuing bank, the bid is properly rejected as nonresponsive since such a letter does not provide the required firm commitment.

PROCUREMENT

B-228899.2 Nov. 2, 1987

Bid Protests

87-2 CPD 433

GAO Procedures

Administrative Reports

Comments Timeliness

PROCUREMENT

Bid Protests

GAO Procedures

GAO Decisions

Reconsideration

A protest file which was closed because the protester failed to file comments on the agency report within 7 working days after the protester received a copy of the report will not be reopened where the nonreceipt of comments was due to the protester's failure to properly address them.

PROCUREMENT

B-228972.3 Nov. 2, 1987

Bid Protests

87-2 CPD 434

GAO Procedures

GAO Decisions

Reconsideration

The General Accounting Office's failure to separately consider an issue that is subsumed under the principal issue upon which the decision was based does not provide a basis for reconsideration.

PROCUREMENT
Sealed Bidding
Invitations for Bids
Amendments
Acknowledgment
Responsiveness

B-228024 Nov. 3, 1987
87-2 CPD 437

The failure to acknowledge a solicitation amendment imposing Service Contract Act wage rates cannot be cured after bid opening by a bidder whose employees are not already covered by a collective bargaining agreement binding the firm to pay wages not less than those prescribed by the Secretary of Labor.

PROCUREMENT
Socio-Economic Policies
Small Businesses
Size Determination
GAO Review

B-228350.2 Nov. 3, 1987
87-2 CPD 438

Protest which could only be reasonably read as challenging small business size status of low bidder properly was dismissed as for review by the Small Business Administration (SBA). Although initial protest did not specifically dispute contracting officer's conclusion that size status protest filed with him was untimely, and General Accounting Office (GAO) therefore did not err in failing to resolve that issue, facts obtained from contracting agency indicate that the protester did not file a size status protest with the contracting officer within 5 days after bid opening as required by applicable regulations.

GAO jurisdiction to determine timeliness of small business size status protest does not confer authority to retain primary jurisdiction while referring matter to SBA for determination, because SBA has conclusive statutory authority to determine small business size status for federal procurement purposes.

PROCUREMENT **B-228437 Nov. 3, 1987**
Competitive Negotiation 87-2 CPD 439
Contract Awards
Administrative Discretion
Cost/Technical Tradeoffs
Technical Superiority

Award of a negotiated contract to a higher-cost, technically superior offeror is not objectionable where award on that basis is consistent with the evaluation criteria.

PROCUREMENT **B-228746 Nov. 3, 1987**
Sealed Bidding 87-2 CPD 440
Bids
Responsiveness
Descriptive Literature
Adequacy

Where an invitation for bids requires the submission of descriptive literature to establish conformance of the product offered with the material specifications of the solicitation, a bid must be rejected as nonresponsive if the literature submitted does not address, or evidence conformity with, the specifications.

Agency reasonably determined that bidder's descriptive literature demonstrates conformance to the technical requirements of the solicitation where literature explicitly provides that product meets requirement at issue.

PROCUREMENT**B-228881 Nov. 3, 1987****Sealed Bidding****87-2 CPD 441****Invitations for Bids****Post-bid Opening Cancellation****Justification****Sufficiency**

An invitation for bids may only be canceled after bid opening and the exposure of bids when a compelling reason exists for doing so. Failure of a housing maintenance and repair services IFB to mention that some of the housing units covered by the schedule of work will be demolished does not provide such a compelling reason where any impact of the demolition on the maintenance and repair schedule of work will be minimal and award under the IFB will meet the government's actual needs without prejudice to other bidders.

PROCUREMENT**B-228911 Nov. 3, 1987****Sealed Bidding****87-2 CPD 442****Alternate Bids****Acceptance****Propriety**

Where a bidder submits alternate bids that meet the specifications, the government is not precluded from evaluating and accepting the successful alternate bid even where the solicitation does not provide for or permit alternate bids.

PROCUREMENT**Sealed Bidding****Unbalanced Bids****Materiality****Responsiveness**

A bid is not mathematically unbalanced unless the bid contains both understated prices for some work and overstated prices for other work.

B-226665.2 Nov. 4, 1987
87-2 CPD 443

PROCUREMENT
Special Procurement Methods/Categories
Research/Development Contracts
Requests for Proposals
Criteria

PROCUREMENT	B-227875.2	Nov. 4, 1987
Bid Protests	87-2	CPD 444
GAO Procedures		
GAO Decisions		
Reconsideration		

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PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-day Rule

B-227875.2 Con't
Nov. 4, 1987

Protest allegation first raised in request for reconsideration is untimely where protest basis was known to the protester several months prior to filing its request for reconsideration.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-day Rule

B-228571 Nov. 4, 1987
87-2 CPD 445

Protest filed with GAO subsequent to agency-level protest is dismissed as untimely where the original protest was untimely filed with agency.

PROCUREMENT
Sealed Bidding
Bids
Evaluation
Price Reasonableness
Administrative Discretion

B-228906 Nov. 4, 1987
87-2 CPD 446

Agency's rejection of only bid received on the bases of unreasonable price and failure to solicit five of six vendors on the recommended source list is proper where the bid price received is approximately 38 percent higher than the government estimate.

PROCUREMENT **B-227886.2 Nov. 5, 1987**
Noncompetitive Negotiation 87-2 CPD 447
Contract Awards
Sole Sources
Propriety

Sole-source award of a contract is not objectionable where the agency reasonably determined that only one source could supply the desired item, and the protester, who submitted the only response to the agency's notice of intent to negotiate a sole-source contract, refused to supplement its incomplete qualification statement. The agency could not, therefore, determine whether the protester was in fact qualified in order to adjudge whether a competitive procurement should be conducted.

PROCUREMENT **B-227936 Nov. 5, 1987**
Bid Protests **87-2 CPD 448**
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protest of agency failure to give notice during negotiations that request for waiver from standardization requirement was not approved is untimely where offerors were advised in writing, prior to initial closing date, that waiver request would not be discussed and protest of this alleged impropriety was not raised prior to the initial closing date.

PROCUREMENT
Competitive Negotiation
Discussion
Adequacy
Criteria

Agency was not required to conduct discussions that would result in the disclosure of another offeror's innovative approach to increasing throughput capacity of automatic test equipment--by including two rather than one test station in each system--since this would result in prohibited technical transfusion.

B-227936 Con't
Nov. 5, 1987

B-228026 Nov. 5, 1987
87-2 CPD 449

B-228026 Nov. 5, 1987
87-2 CPD 449

B-228026 Nov. 5, 1987
87-2 CPD 449

B-228026 Nov. 5, 1987
87-2 CPD 449

B-228026 Nov. 5, 1987
87-2 CPD 449

B-228026 Con't
Nov. 5, 1987

PROCUREMENT
Contractor Qualification
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

PROCUREMENT	B-228488	Nov. 5, 1987
Competitive Negotiation	87-2	CPD 450
Contract Awards		
Administrative Discretion		
Cost/Technical Tradeoffs		
Technical Superiority		

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PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-day Rule

B-228521 Nov. 5, 1987
87-2 CPD 451

Where alleged improprieties in a solicitation are not apparent until the time when the protester receives a debriefing, failure on the part of the protester to file its protest within 10 working days of that debriefing renders the protest untimely.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

B-228557 Nov. 5, 1987
87-2 CPD 452

Protest against an alleged deficiency in a solicitation is untimely when not filed until after the closing date for receipt of initial proposals.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-day Rule

Protest that the sole manufacturer of one of the items being procured has quoted that item to the protester at an uncompetitive price and thus the agency should itself procure the item is untimely when the protest is filed more than 10 days after the protester received the manufacturer's quotation.

PROCUREMENT**B-228589 Nov. 5, 1987**

**Contract Management
Contract Administration
Contract Terms
Compliance
GAO Review**

Whether payment and performance bond requirements, which are for implementation after contract award, have been met is a matter of contract administration and is not for consideration under General Accounting Office Bid Protest Regulations.

PROCUREMENT

**Sealed Bidding
Below-Cost Bids
Contract Awards
Propriety**

The submission of a below-cost bid does not by itself constitute a basis for challenging an otherwise valid contract award, but rather raises the issue of the bidder's ability to perform the contract, the affirmative determination of which is not reviewed by the General Accounting Office absent a showing that the determination may have been made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

PROCUREMENT**B-228596 Nov. 5, 1987**

**Bid Protests
GAO Procedures
Protest Timeliness
10-day Rule**

87-2 CPD 453

Where initial protest to contracting agency is untimely filed, subsequent protest to General Accounting Office is dismissed as untimely.

PROCUREMENT**B-227375.2 Nov. 6, 1987****Sealed Bidding****87-2 CPD 454****Two-Step Sealed Bidding
Offers****Rejection****Propriety**

Protester's technical proposal under step one of two-step sealed bid procurement properly was rejected as being technically unacceptable where the solicitation required detailed information supporting the proposed approach and the protester's proposal referenced prior test results casting serious doubt on the validity of its approach.

PROCUREMENT**B-227843.3 et al.****Bid Protests****Nov. 6, 1987****GAO Procedures****87-2 CPD 455****GAO Decisions****Reconsideration****PROCUREMENT****Bid Protests****GAO Procedures****Information Submission****Timeliness**

Reconsideration request is denied where not supported by timely presented information establishing that prior decision was based on error of fact or law.

PROCUREMENT**B-228089 Nov. 6, 1987****Specifications****87-2 CPD 456****Minimum Needs Standards****Competitive Restrictions****Allegation Substantiation****Evidence Sufficiency**

Protest that specification is in excess of contracting agency's minimum needs and is unduly restrictive of competition is denied where there is no showing that agency lacked a reasonable basis for requiring inert batt insulation in attics of military family housing due to safety concerns.

PROCUREMENT
Small Purchase Method
Quotations
Modification
Acceptability

B-228098 Nov. 6, 1987
87-2 CPD 457

The procuring agency need not consider a late modification in response to a request for quotation for a federal supply schedule small purchase procurement where there has been substantial activity in evaluating quotations and the potential for prejudice to another bidder exists.

PROCUREMENT
Sealed Bidding
Bid Guarantees
Responsiveness
Invitations for Bids
Identification

B-228569 Nov. 6, 1987
87-2 CPD 459

A bid bond that omits the solicitation number and contains no other indicia of the solicitation under which the surety agrees to be bound, aside from the correct bid opening date, is materially defective and requires rejection of the bid.

PROCUREMENT
Sealed Bidding
Bids
Responsiveness
Acceptance Time Periods
Deviation

Bidder's insertion of "15" in a space to specify the number of calendar days in the offered bid acceptance period renders the bid nonresponsive where the invitation required a minimum acceptance period of 60 days, notwithstanding that the protester's alleged intention was to offer 15 days in addition to the minimum period.

PROCUREMENT

B-228756.2 Nov. 6, 1987

Small Purchase Method

87-2 CPD 460

Quotations

Evaluation

Technical Acceptability

Tests

PROCUREMENT

Specifications

Minimum Needs Standards

Determination

Administrative Discretion

A contracting agency's responsibility for determining its actual needs includes determining the type and amount of testing necessary to ensure product compliance with specifications, and the General Accounting Office will not question such a determination absent a clear showing that it was arbitrary or capricious.

PROCUREMENT

B-228937 Nov. 6, 1987

Sealed Bidding

87-2 CPD 461

Bids

Error Correction

Pricing Errors

Line Items

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Price Omission

Line Items

Agency properly permitted bidder to correct an omitted price where it was clear from the bidder's prices on related items both that bidder had intended to bid on the item and the amount that it had intended to bid.

PROCUREMENT

Sealed Bidding

Bids

Minor Deviations

Government Advantage

Acceptability

B-228937 Con't

Nov. 6, 1987

Error of \$28 in awardee's extended price for one item may be waived as a minor informality where the difference between awardee's total price and next low price is approximately \$1.2 million.

PROCUREMENT

Sealed Bidding

Bids

Error Correction

Pricing Errors

Line Items

PROCUREMENT

Sealed Bidding

Bids

Responsiveness

Price Omission

Line Items

Where prices are offered on all line items, bidder's failure to enter a price total does not render its bid nonresponsive.

PROCUREMENT

Sealed Bidding

Contract Awards

Propriety

Allegation Substantiation

Evidence Sufficiency

Protester's allegation that awardee's bid may have been tampered with is denied where protester offers no evidence of tampering.

PROCUREMENT	B-229524; B-229526
Contract Management	Nov. 6, 1987
Contract Administration	87-2 CPD 462
Contract Terms	
Compliance	
GAO Review	

Whether contractor will comply with contract terms during performance is a matter of contract administration which General Accounting Office does not consider as part of its bid protest function.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

By awarding a contract, an agency has determined a firm to be a responsible prospective contractor, and the General Accounting Office will not review a challenge to that affirmative determination absent a showing of possible fraud or bad faith on the part of the contracting officials, or on allegation of the misapplication of definitive responsibility criteria that were contained in the solicitation.

PROCUREMENT	B-227094.2 Nov. 9, 1987
Bid Protests	87-2 CPD 463
GAO Procedures	
Interested Parties	

Where protester's best and final offer (BAFO) properly was determined late and, therefore, proposal was not considered and the protest alleging insufficient time was permitted for submitting the BAFO is untimely, a protest against an award because of deficiencies in awardee's proposal and improper evaluation of the proposal is dismissed because protester is not an interested party.

PROCUREMENT

Bid Protests

GAO Procedures

Protest Timeliness

10-day Rule

B-227094.2 Con't

Nov. 9, 1987

Where protester received amendment to Request For Proposals 6 hours prior to closing, it has 10 days after closing to file a protest that its offer was rejected as late. Protest received after the 10 day period is untimely.

PROCUREMENT

Competitive Negotiation

Discussion

Adequacy

Criteria

B-228012 Nov. 9, 1987

87-2 CPD 465

Protest that agency failed to conduct meaningful discussions is without merit where the contracting activity requested that the protester furnish additional data regarding its proposed product and this request should have apprised the protester of the areas of its proposal found deficient.

PROCUREMENT

Competitive Negotiation

Offers

Technical Acceptability

Deficiency

Blanket Offers of Compliance

In procurement conducted on a brand name or equal basis, an offer of an equal product properly may be rejected where the offer, while containing a blanket statement expressing compliance with the salient characteristics set forth in the solicitation, does not include sufficient documentation allowing the contracting activity to determine whether the product in fact complies with the stated minimum requirements.

PROCUREMENT

Bid Protests

GAO Procedures

Agency Notification

Late Submission

B-228020 Nov. 9, 1987

87-2 CPD 466

PROCUREMENT

Bid Protests

GAO Procedures

Agency Notification

Purposes

The purpose of requirement in Bid Protest Regulations that protester serve procuring agency with a copy of its protest within 1 day of filing with the General Accounting Office is to inform the agency promptly of the basis of protest to enable it to prepare its report within 25 working days. When, as here, the delay in service is minor and does not prevent the agency from submitting a timely report, we will not dismiss the protest on this basis.

PROCUREMENT

Competitive Negotiation

Discussion

Adequacy

Criteria

Where a proposal is considered acceptable and in the competitive range, the agency is under no obligation to discuss every aspect of it that received less than the maximum possible score. It is not the agency's responsibility to help a firm whose proposal, although acceptable, simply is not the best one in the competition to bring the proposal up to the level of other higher ranked proposals.

PROCUREMENT	B-228020	Con't
Competitive Negotiation	Nov. 9, 1987	
Offers		
Evaluation		
Administrative Discretion		

Procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and their evaluations will not be disturbed unless shown to be arbitrary or in violation of procurement laws or regulations. A mere disagreement between the protester and the agency over the technical evaluation is not sufficient to show that the evaluation was unreasonable.

PROCUREMENT	B-228332.2	Nov. 9, 1987
Bid Protests	87-2	CPD 467
GAO Procedures		
GAO Decisions		
Reconsideration		

Request for reconsideration of dismissal is denied where protester shows no errors of fact or law in determination that protester is not interested party.

PROCUREMENT	B-228462 Nov. 9, 1987
Bid Protests	87-2 CPD 468
GAO Procedures	
Interested Parties	
Direct Interest Standards	

Allegation by a protester that is not in line for award even if the issue is decided in its favor will not be considered because the protester does not have the direct economic interest required to be considered an interested party under General Accounting Office Bid Protest Regulations.

PROCUREMENT**Bid Protests****GAO Procedures****Protest Timeliness****10-day Rule****B-228462 Con't****Nov. 9, 1987****PROCUREMENT****Competitive Negotiation****Requests for Proposals****Competition Rights****Contractors****Exclusion**

Protest that agency improperly failed to send protester a solicitation is dismissed as untimely when not filed within 10 working days after the closing date for the receipt of proposals as published in the Commerce Business Daily, or after the extended closing date.

PROCUREMENT**Bid Protests****GAO Procedures****Protest Timeliness****10-day Rule****B-229498 Nov. 9, 1987****87-2 CPD 469**

Filing of a protest with the General Services Administration Board of Contract Appeals that is not within the Board's jurisdiction does not toll time for filing with the General Accounting Office.

PROCUREMENT

Bid Protests

GAO Procedures

GAO Decisions

Reconsideration

B-227809.2 Nov. 10, 1987

87-2 CPD 471

PROCUREMENT

Competitive Negotiation

Requests for Quotations

Cancellation

Justification

Minimum Needs Standards

Information relating to whether there is sufficient reason to cancel a solicitation after proposals have been opened can be considered no matter when that information surfaces, even where only first provided by the procuring agency in response to a protest.

PROCUREMENT

Bid Protests

GAO Procedures

GAO Decisions

Reconsideration

PROCUREMENT

Competitive Negotiation

Requests for Quotations

Cancellation

Propriety

Price Disclosure

Even where the apparently successful offeror's price has been disclosed on a negotiated solicitation for offers of leased space where price is the sole evaluation factor, the agency need only show a reasonable basis to cancel the procurement.

PROCUREMENT

B-227811.2 Nov. 10, 1987

Bid Protests

87-2 CPD 472

GAO Procedures**GAO Decisions****Reconsideration**

Request for reconsideration is denied where protester fails to show that decision was based on error of fact or law.

PROCUREMENT

B-228092 Nov. 10, 1987

Bid Protests

87-2 CPD 473

GAO Procedures**Protest Timeliness****10-day Rule****Adverse Agency Actions**

Protest that procuring agency was conducting a competitive procurement at the same time it was considering placing one item of that procurement with the Small Business Administration under the section 8(a) program is dismissed as untimely because it was filed more than 10 working days after the basis of the protest was known.

PROCUREMENT**Socio-Economic Policies****Small Business 8(a) Subcontracting****Contracts****Terms****GAO Review**

Since the Small Business Act mandates that disagreements between the Small Business Administration and the contracting officer with regard to the terms and conditions of a proposed contract under section 8(a) of the Small Business Act be submitted for determination to the head of the procuring agency, the General Accounting Office will not review disagreements about the fair market price of a contemplated 8(a) contract.

PROCUREMENT B-228092 Con't
Socio-Economic Policies Nov. 10, 1987
Small Business 8(a) Subcontracting
Use
Administrative Discretion

General Accounting Office will not object to an agency's decision to withdraw a procurement from the Small Business Act's section 8(a) program absent a showing of fraud or bad faith by government officials.

PROCUREMENT B-228150 Nov. 10, 1987
Competitive Negotiation 87-2 CPD 474
Offers
Late Submission
Acceptance Criteria

Where solicitation specifies that offer must be received at a particular location receipt at a different location at the government installation prior to the time specified for receipt of offers does not make the proposal timely.

PROCUREMENT
Competitive Negotiation
Offers
Submission Methods
Telegrams

Where telegraphic proposal modification is time/date stamped by the procuring agency 20 minutes prior to time for receipt of offers, late receipt is due to offeror's failure to allow sufficient time for delivery notwithstanding Western Union records which purport to show the modification was transmitted over an hour prior to time for receipt of offers, since the only acceptable evidence to establish timely receipt is the time/date stamp of the government installation.

PROCUREMENT**B-228193 Nov. 10, 1987****Sealed Bidding****87-2 CPD 475****Bid Guarantees****Responsiveness****Contractors****Identification**

Where a bid is submitted in the name of one firm as a corporation but is accompanied by a bid bond in the name of the corporate bidder and an individual as a joint venture doing business under the corporate name, the bond is materially deficient, as the obligation of the surety is unclear, and, therefore, the bid must be rejected as nonresponsive.

PROCUREMENT**B-228206 Nov. 10, 1987****Specifications****87-2 CPD 476****Ambiguity Allegation****Specification Interpretation**

A protest contending that a solicitation's provisions are ambiguous because they are not sufficiently specific is denied since all provisions to which the protester objects reasonably describe the work to be done and the mere presence of some risk does not render a solicitation improper. There is no requirement that specifications be so detailed that site visits become unnecessary.

PROCUREMENT**B-228968 Nov. 10, 1987****Specifications****87-2 CPD 478****Minimum Needs Standards****Competitive Restrictions****Design Specifications****Justification**

Protest that in soliciting bids to replace pipe system agency should permit firm to use direct conduit installation method instead of specifying shallow trench method is denied where specification is based on a proper 25-year life cycle cost analysis, as required by agency instruction, showing that the shallow trench method is the more economical one.

PROCUREMENT**B-228021 Nov. 12, 1987****Bid Protests****GAO Procedures****Administrative Reports****Comments Timeliness**

Response to Congressman's letter explains that protest was properly dismissed because protester did not file timely comments on agency report or notify our Office that he had not received a copy of the report as he was instructed by protest acknowledgment letter.

PROCUREMENT**B-228603 Nov. 12, 1987****Socio-Economic Policies****87-2 CPD 479****Small Businesses****Responsibility****Negative Determination****GAO Review**

Fact that protester previously received a certificate of competency after a nonresponsibility determination by agency does not constitute showing of possible fraud or bad faith in same agency's nonresponsibility determination on current procurement; General Accounting Office thus will not review negative responsibility determination.

Contracting officer has discretion not to conduct a preaward survey of a small business before referring a nonresponsibility determination to the Small Business Administration for a certificate of competency review.

PROCUREMENT

Bid Protests

Moot Allegation

GAO Review

B-227865.2 Nov. 13, 1987

87-2 CPD 481

Protest of solicitation provision that prohibits contract carriers from discriminatory cargo space accommodations, facilities and loading or landing of freight is denied, where the protester concedes that it will comply with the provision which is neither onerous nor prejudicial.

PROCUREMENT

Competitive Negotiation

Requests for Proposals

Terms

Liquidated Damages

Propriety

Agency can require a contractor to pay for actual damages in the event of contract breach and can define this measure of damages in the contract.

PROCUREMENT

Competitive Negotiation

Requests for Proposals

Terms

Prior Contracts

Disclosure

Military Sealift Command may require contract carrier to provide in confidence prior to award the essential terms of their contracts with other shippers on the same routes on which they proposed in order to comply with the requirement in the Cargo Preference Act of 1904, 10 U.S.C. 2631, that Department of Defense shippers not pay higher charges than those paid by private parties for transporting like goods.

PROCUREMENT
Competitive Negotiation
Requests for Proposals
Terms
Shipment Schedules

B-227865.2 Con't
Nov. 13, 1987

A solicitation requirement that ocean contract carriers shall provide a sailing schedule to the government's booking authority 30 days prior to a scheduled sailing is not unreasonable where the protester has not shown the provision does more than impose a discipline comparable to that of common carriers, on the regularity of whose schedules the procuring agency historically has been able to rely for the efficient planning of its cargo transportation needs.

PROCUREMENT
Bid Protests
GAO Procedures
Interested Parties

B-227955; B-227955.2
Nov. 13, 1987
87-2 CPD 482

Where Small Business Administration has rejected protester's charge that lower bidder is not a small business, protester would not be in line for award even if remainder of protest were sustained. Therefore, protester is not an interested party to challenge agency's evaluation of other bids.

PROCUREMENT
Special Procurement Methods/Categories
Service Contracts
Terms

Federal Acquisition Regulation permits inclusion of minor construction tasks in services contracts.

**PROCUREMENT
Specifications**

**B-227955; B-227955.2 Con't
Nov. 13, 1987**

**Ambiguity Allegation
Specification Interpretation**

IFB provisions indicating the approximate number of containers contractors must provide are not unreasonably uncertain.

PROCUREMENT

**Specifications
Minimum Needs Standards
Competitive Restrictions
GAO Review**

IFB provisions concerning the type of equipment needed are not unduly restrictive where the protester has not shown how the specifications restrict competition.

PROCUREMENT

B-228033; B-228033.2

Bid Protests

Nov. 13, 1987

GAO Procedures

87-2 CPD 483

Protest Timeliness

10-day Rule

Protest that solicitation did not contain a wage determination is dismissed as untimely where the protester did not raise this issue until after award.

PROCUREMENT

**Contract Management
Contract Administration
GAO Review**

Whether wages paid by a contractor comply with Service Contract Act requirements is a matter for the Department of Labor.

PROCUREMENT **B-228033; B-228033.2 Con't**
Socio-Economic Policies **Nov. 13, 1987**
Labor Standards
Construction Contracts
Wage Rates
Amount Determination

General Accounting Office does not review the accuracy or correctness of wage determinations issued by the Department of Labor.

PROCUREMENT **B-229062 Nov. 13, 1987**
Sealed Bidding **87-2 CPD 484**
Bids
Bid Guarantees
Omission
Responsiveness

The failure to furnish a required bid guarantee renders the bid nonresponsive, and may not be waived.

PROCUREMENT **B-229484 Nov. 13, 1987**
Bid Protests **87-2 CPD 485**
GAO Procedures
Protest Timeliness
10-day Rule

Protest is untimely where letter in record written by protester indicates that protester knew the basis for protest more than 10 days prior to filing of the protest.

PROCUREMENT**B-227162.2 Nov. 16, 1987****Bid Protests****87-2 CPD 486****GAO Procedures****GAO Decisions****Reconsideration**

Decision holding that contracting agency failed to show a reasonable basis for splitting contract award between lowest and second lowest priced offerors under solicitation for nonflaming paint is affirmed on reconsideration where agency fails to show any error of law or fact in original decision.

PROCUREMENT**B-227958 Nov. 16, 1987****Specifications****87-2 CPD 487****Minimum Needs Standards****Determination****Administrative Discretion**

The General Accounting Office will not object to the contracting agency's technical judgment that necessary size and performance criteria set forth in the specifications are not impossible to meet absent clear and convincing evidence of impossibility, since the responsibility for drafting proper specifications is the contracting agency's.

PROCUREMENT**B-227060.3 Nov. 17, 1987****Bid Protests****87-2 CPD 489****GAO Procedures****Preparation Costs**

Protester is not entitled to protest costs where it received contract award for substantially the same requirement covered by the original solicitation.

PROCUREMENT

B-228718 Nov. 17, 1987

Specifications

87-2 CPD 490

Minimum Needs Standards

Competitive Restrictions

Allegation Substantiation

Evidence Sufficiency

Protest that salient characteristics in brand name or equal solicitation for X-ray screening machines restricted competition based on alternate technologies is without merit where solicitation, as amended, clearly permitted alternate technologies with at least equivalent capabilities.

PROCUREMENT

Specifications

Minimum Needs Standards

Competitive Restrictions

Geographic Restrictions

Justification

Requirement that offerors have units in place in several United States locations for purposes of evaluating machine operation and maintenance network is not unduly restrictive of competition merely because it does not provide for consideration of units in international locations, where record shows that, due to differences in environmental and geographical conditions, evaluation of domestic units is best means of establishing offeror's ability to meet the agency's minimum needs.

PROCUREMENT
Payment/Discharge
Shipment Costs
Overcharge
Payment Deductions
Propriety

B-226702, et al.
Nov. 18, 1987

The General Services Administration deducted overcharges from a household goods forwarder which collected charges on the premise that a containerized International Through Government Bill of Lading shipment was routed through Rhein-Main Air Force Base, the normal port designated for use in Germany by the Military Basic Tender. GSA's action was based on GBL notations indicating that the shipment was routed through Ramstein Air Force Base. Held: it was unnecessary for GSA to substantiate its factual determination with a port certificate issued by Ramstein's port officer since the tender provision requiring such certificates applies only where the carriers seek rate adjustments; therefore, GSA's action is sustained.

PROCUREMENT
Sealed Bidding
Low Bids
Error Correction
Price Adjustments
Propriety

B-228340 Nov. 18, 1987
87-2 CPD 493

Protest of upward correction of low bid is denied where the record supports contracting agency's determination that there was clear and convincing evidence establishing the existence of two mistakes in the bid and of the intended bid price, and bid is low with or without correction.

PROCUREMENT**B-228533 Nov. 18, 1987****Bid Protests****87-2 CPD 494****GAO Procedures****Protest Timeliness****Significant Issue Exemptions****Applicability**

The General Accounting Office will not consider the merits of an untimely protest or invoke the "significant issue" exception to our timeliness regulations where the issues raised are not matters of first impressions or of widespread interest to the procurement community.

PROCUREMENT**Bid Protests****GAO Procedures****Protest Timeliness****10-day Rule****Propriety**

Protest filed 4 months following award, although allegedly shortly after information concerning the basis of protest was received, is dismissed as untimely since the protester failed to diligently seek information to determine whether a basis of protest existed.

PROCUREMENT**B-229182 Nov. 18, 1987****Payment/Discharge****Federal Procurement Regulations/Laws****Revision****Severance Compensation**

General Accounting Office has no comment on a proposal to change Federal Acquisition Regulation 31.205-6(g)(2)(i) to make allowable severance payments to involuntarily terminated workers notwithstanding that early or normal retirement payments might also be made.

PROCUREMENT

Bid Protests

Allegation Substantiation

Lacking

GAO Review

Adequacy

B-228252.3 Nov. 19, 1987

87-2 CPD 496

The fact that the contracting officer did not declare the protester's bid nonresponsive at bid opening does not constitute waiver of the failure to include an adequate bid guarantee, and the government is not estopped from rejecting the bid.

PROCUREMENT

Sealed Bidding

Bid Guarantees

Responsiveness

Checks

Adequacy

The General Accounting Office will summarily dismiss a protest without benefit of an agency report, even where an agency report was requested at the outset of the proceedings, where the protest on its face fails to state a valid basis for protest.

PROCUREMENT

B-228297 Nov. 20, 1987

Bid Protests

87-2 CPD 497

GAO Procedures

Preparation Costs

PROCUREMENT

Bid Protests

GAO Procedures

Protest Timeliness

Apparent Solicitation Improprieties

PROCUREMENT

Competitive Negotiation

Offers

Preparation Costs

Apparent Solicitation Improprieties

Disclosure

Although request for proposals (RFP) for ship repair work was defective for failure to specify which of two types of master repair agreement offerors were required to hold to be eligible for award, protester, which does not hold the type of master agreement actually required, is not entitled to recover its proposal preparation or protest costs since, although defect in RFP should have been apparent to protester, protester chose to submit its proposal without attempting to clarify defective provision with contracting agency before proposals were due.

PROCUREMENT

B-228465 Nov. 20, 1987

Bid Protests

87-2 CPD 498

Conferences

Justification

Direct Interest Standards

General Accounting Office will deny a request for a conference when the protest is not being considered on the merits, since a conference would serve no useful purpose.

PROCUREMENT**B-228465 Con't****Bid Protests****Nov. 20, 1987****GAO Procedures****Interested Parties****Direct Interest Standards**

Protest is dismissed because protester is not an interested party under General Accounting Office's Bid Protest Regulations where protester, fourth low bidder, would not be in line for award should its protest against low bid be sustained, given that protester has not protested against any possible award to second or third low bidder.

PROCUREMENT**B-229595 Nov. 20, 1987****Bid Protests****87-2 CPD 499****GAO Procedures****Protest Timeliness****Apparent Solicitation Improprieties**

Protest that a certain model specified in the solicitation otherwise fails to meet the solicitation's specifications must be filed prior to the initial closing date for receipt of proposals.

Protest submitted with a proposal is untimely when based upon alleged improprieties in the solicitation which were apparent prior to the closing for receipt of proposals.

PROCUREMENT

B-227965.3 Nov. 23, 1987

Special Procurement

87-2 CPD 500

Methods/Categories

In-house Performance

Cost Estimates

Contract Administration

Personnel

Agency determination of the staffing level required to accomplish the performance work statement under Office of Management and Budget Circular A-76 cost comparison will not be questioned where the record does not show the determination was made in a manner tantamount to fraud or bad faith.

PROCUREMENT

Special Procurement Methods/Categories

In-house Performance

Cost Evaluation

Government Advantage

Allegation Substantiation

Even though a firm may include in its offer a price factor to protect itself from payment deductions stipulated in the solicitation for defective performance by a contractor, Office of Management and Budget Circular A-76 does not require that the competitive positions of the government and a commercial offeror be equalized by adding a similar factor to the government estimate.

PROCUREMENT**B-227989; B-227989.2****Bid Protests****Nov. 23, 1987****GAO Procedures****87-2 CPD 501****Interested Parties****Direct Interest Standards**

Offeror whose proposal was properly eliminated from the competitive range does not have the requisite direct economic interest to be considered an interested party to protest either the reasonableness of the cost-technical tradeoff between the two highest rated offerors in the competitive range, or the cost reasonableness of the awardee's proposal. The protester would not be in line for award if either protest issue were sustained, and cancellation and resolicitation would not be warranted.

PROCUREMENT**Competitive Negotiation****Offers****Competitive Ranges****Exclusion****Administrative Discretion**

Agency determination to exclude offeror from competitive range is proper when the offeror's proposal ranked fifth out of eight proposals received and the agency reasonably determined that the offeror's technical proposal evidenced such significant deficiencies in understanding the scope of the work required under the solicitation and in its management approach that, despite its low estimated cost, the protester's proposal had no reasonable chance of receiving the award.

B-227996 Nov. 23, 1987

Competitive Negotiation

Competitive Advantage

Non-prejudicial Allegation

PROCUREMENT

Competitive Negotiation

Contract Awards

Propriety

PROCUREMENT

Specifications

Minimum Needs Standards

Competitive Restrictions

Justification

Sufficiency

Solicitation is not unduly restrictive merely because

PROCUREMENT
Special Procurement
Methods/Categories
Subcontracts
Contract Awards
GAO Review

B-228028 Nov. 23, 1987
87-2 CPD 503

Protest of a subcontract awarded by a government prime contractor is dismissed where the subcontract was not "by or for" the government.

PROCUREMENT
Bid Protests
GAO Procedures
Preparation Costs

B-228049 Nov. 23, 1987
87-2 CPD 504

Where General Accounting Office sustains protest against unjustified sole-source procurement, protester is entitled to recover costs of filing and pursuing the protest.

PROCUREMENT
Contractor Qualification
Approved Sources
Qualification
Standards

Requirements for the establishment of qualification standards under 10 U.S.C. 2319 are expressly inapplicable to approved source products for which specifications were developed prior to the statutory effective date.

PROCUREMENT **B-228049 Con't**
Noncompetitive Negotiation Nov. 23, 1987
Contract Extension
Sole Sources
Propriety

Protest against sole-source award of a 5-year requirements contract for a broad range of spare parts justified on the basis of the availability of only one known approved source is sustained where the justification provides no reason for either the broad range or the extended term of the contract award, and both the justification and the solicitation expressly contemplate the availability of other approved sources over the life of the contract.

PROCUREMENT **B-228052 Nov. 23, 1987**
Specifications **87-2 CPD 505**
Minimum Needs Standards
Competitive Restrictions
Performance Specifications
Geographic Restrictions

Requirement that offerors have units in place in several United States locations for purposes of evaluating machine operation and maintenance network is not unduly restrictive of competition merely because it does not provide for consideration of units in international locations, where record shows that, due to differences in environmental and geographical conditions, domestic units are best means of establishing offeror's ability to meet the agency's minimum needs.

PROCUREMENT **B-228131 Nov. 23, 1987**
Bid Protests **87-2 CPD 506**
Moot Allegation
GAO Review

Where agency amends solicitation provisions to satisfy the protester's concerns, a protest based on those provisions is academic.

B-228131 Con't
Nov. 23, 1987

PROCUREMENT
Competitive Negotiation
Contract Awards
Multiple/Aggregate Awards
Propriety

PROCUREMENT
Competitive Negotiation
Offers
Preparations Costs

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PROCUREMENT
  Specifications
    Minimum Needs Standards
      Competitive Restrictions
        Justification
          Sufficiency

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PROCUREMENT	B-228139	Nov. 23, 1987
Competitive Negotiation	87-2	CPD 507
Contract Awards		
Administrative Discretion		
Cost/Technical Tradeoffs		
Technical Superiority		

A protest against agency's allegedly improper evaluation of proposals is without merit where review of the evaluation provides no basis to question the reasonableness of the determination that the awardee submitted a technically superior proposal and, based on the solicitation evaluation formula, the awardee's proposal offered the combination of management, quality and price most advantageous to the government.

PROCUREMENT	B-228850	Nov. 23, 1987
Bid Protests	87-2	CPD 508
GAO Procedures		
Protest Timeliness		
10-day Rule		

General Accounting Office will not consider the merits of an untimely basis of protest that allegedly relates to, but is distinct from, another timely basis of protest, as each basis of protest must independently satisfy the timeliness requirements set forth in our Bid Protest Regulations.

PROCUREMENT
Competitive Negotiation
Offers
Competitive Ranges
Exclusion
Administrative Discretion

Protest that offeror was improperly excluded from the competitive range is denied where record shows that agency reasonably determined that proposal contained major technical weaknesses, correction of which would require complete revision of proposal.

PROCUREMENT**B-228870 Nov. 23, 1987****Bid Protests****87-2 CPD 509****Bias Allegation****Allegation Substantiation****Burden of Proof**

Protest that contracting officials were biased against Indian-owned firms is denied where allegation is based solely on inference or supposition.

PROCUREMENT**Competitive Negotiation****Offers****Competitive Ranges****Exclusion****Administrative Discretion**

GAO finds no basis to question exclusion of protester's proposal from the competitive range where proposal reasonably was found deficient in some areas to the extent that major revisions would have been necessary in order for the proposal to have been considered competitive.

PROCUREMENT**B-227689.3 Nov. 24, 1987****Bid Protests****87-2 CPD 510****GAO Procedures****Interested Parties****Direct Interest Standards**

Protest that competitor's bid is mistaken is not for consideration by General Accounting Office since only the contracting parties may assert mistake in bid questions.

Protest by firm that is not in line for award if the protest were sustained is dismissed since the protester does not have the requisite direct economic interest in the contract award to be considered an interested party under Bid Protest Regulations.

PROCUREMENT
Sealed Bidding
Unbalanced Bids
Materiality
Responsiveness

B-227829.2 Nov. 24, 1987
87-2 CPD 511

Bid which is low for the total of the base item and option item, both of which were awarded at the time of contract award, is not materially unbalanced since there are no circumstances present under which it would not constitute the lowest cost to the government.

PROCUREMENT
Bid Protests
GAO Procedures
Protest Timeliness
10-day Rule

B-228148 Nov. 24, 1987
87-2 CPD 512

Where protester waited more than 9 months after filing a protest with the contracting agency (and 3 months after being advised that the agency referred the matter for investigation) before filing a protest with General Accounting Office (GAO), the protester did not diligently pursue the matter and its protest to GAO is untimely.

PROCUREMENT
Competitive Negotiation
Contract Awards
Pre-qualification
Contractor Personnel
Security Clearances

B-228299 Nov. 24, 1987
87-2 CPD 513

Where amended solicitation did not require that all employees have specified security clearance prior to award or as a condition of award, protest that agency improperly accepted offer which showed that one proposed employee did not have required security clearance is without merit.

PROCUREMENT

B-227555.3 Nov. 25, 1987

**Competitive Negotiation
Discussion
Adequacy
Criteria**

87-2 CPD 516

Protest that agency failed to conduct adequate discussions in areas of weaknesses is without merit, where, in response to agency's questions designed to lead protester into areas of weakness found in its proposal, protester intentionally chose not to augment its proposal for reasons of business judgment.

PROCUREMENT

**Competitive Negotiation
Offers
Evaluation Errors
Allegation Substantiation**

Where record indicates that agency evaluated protester's proposal in accordance with established criteria set forth in solicitation and the evaluation was reasonable, protest based on an offeror's disagreement with the evaluation is denied.

PROCUREMENT

**Competitive Negotiation
Requests for Proposals
Evaluation Criteria
Prior Contracts
Contract Performance**

Technical evaluation must be based upon information provided in the proposal and generally may not be based upon an offeror's past performance.

PROCUREMENT **B-227642.3 Nov. 25, 1987**
Specifications **87-2 CPD 517**
Minimum Needs Standards
Competitive Restrictions
Allegation Substantiation
Evidence Sufficiency

Protest alleging that solicitation's specifications for radio communication intrusion detection system are excessive and unduly restrictive of competition is denied where protester merely disagrees with agency's determination of its minimum needs and fails to show that the radio frequency requirements in the solicitation, which are needed to provide clear signals in an area of high radio interference, are clearly unreasonable or that they exceed the agency's minimum needs.

PROCUREMENT **B-227941.2 Nov. 25, 1987**
Bid Protests **87-2 CPD 518**
GAO Procedures
Preparation Costs

Where the General Accounting Office sustains protest and recommends that the United States Army Corps of Engineers reinstate the protester as the low responsible offeror for purposes of an Office of Management and Budget Circular No. A-76 cost comparison, the award of the protester's costs of filing its protest, including attorney's fees, is inappropriate.

PROCUREMENT **B-228002 Nov. 25, 1987**
Bid Protests **87-2 CPD 519**
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

Protest that delivery schedules in request for proposals overstated agency's minimum needs is untimely and will not be considered because it was not raised until after the closing date for receipt of initial proposals.

PROCUREMENT
Competitive Negotiation
Contract Awards
Initial-offer Awards
Propriety

B-228002 Con't
Nov. 25, 1987

PROCUREMENT
Competitive Negotiation
Discussion
Determination Criteria

Agency may award contract on basis of initial proposals where solicitation advises offerors of possibility, acceptance of initial proposals will result in lowest cost to government, and no discussions were held. Request for information that does not bear on acceptability of proposal and does not provide an opportunity for material proposal revisions does not constitute discussions.

PROCUREMENT
Contractor Qualification
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

General Accounting Office will not consider protest of affirmative determination of responsibility absent showing of possible fraud or bad faith or allegation that definitive responsibility criteria were not applied. Protester's disagreement with affirmative determination that was based on generally favorable information, including positive preaward survey, does not demonstrate bad faith. Contention that offeror failed to provide sufficient information with proposal to support source approval does not involve a definitive responsibility criterion.

PROCUREMENT**B-228808 Nov. 25, 1987****Sealed Bidding****87-2 CPD 520****Two-Step Sealed Bidding****Offers****Rejection****Propriety**

Agency reasonably rejected a proposal as unacceptable under step one of a two-step sealed bid acquisition where the offeror, relying upon the government's experience with it as a provider of a similar requirement, failed to provide specific information required by the solicitation for technical evaluation.

PROCUREMENT**B-228919 Nov. 25, 1987****Specifications****87-2 CPD 521****Minimum Needs Standards****Risk Allocation****Performance Specifications**

Protest by incumbent contractor that solicitation for data entry services fails to advise prospective offerors that agency's computer system is inefficient, thereby precluding data entry operators from performing at industry standards, is denied. The record shows that the agency provided offerors with the most reliable available information concerning the computer system and a site visit to observe the equipment in operation, in addition to detailed information on contract performance requirements. There is no requirement that a specification be so detailed as to eliminate all performance uncertainties and risk.

PROCUREMENT**B-228936 Nov. 25, 1987****Specifications****87-2 CPD 522****Ambiguity Allegation****Specification Interpretation**

Protest against the terms in a solicitation for mess attendant services that provide for inspection by random sampling and payment deductions for defective services is denied where the protester has not shown that the terms are ambiguous or unreasonable.

PROCUREMENT

B-229057 Nov. 25, 1987

**Competitive Negotiation
Offers**

87-2 CPD 523

**Evaluation
Cost Estimates**

Since an agency's cost realism evaluation necessarily involves the exercise of informed judgment as to what costs may be incurred by accepting a proposal to perform a cost type contract, the General Accounting Office will not disturb the results of that evaluation unless it clearly lacks a reasonable basis.

PROCUREMENT**Competitive Negotiation
Offers****Evaluation Errors
Allegation Substantiation**

Protest that the proposed awardee's proposal failed to comply with solicitation technical requirement for a certain type of warehouse within an hour's driving radius of the user activity is denied where record shows that the proposed awardee's proposal met this requirement.

PROCUREMENT

B-229575 Nov. 25, 1987

Bid Protests

87-2 CPD 524

GAO Procedures**Protest Timeliness****Apparent Solicitation Improprieties**

Protest based upon alleged solicitation impropriety which was apparent prior to bid opening is untimely when filed after bid opening.

PROCUREMENT

B-229602 Nov. 25, 1987

Contract Management

87-2 CPD 525

Contract Administration**Contract Terms****Compliance****GAO Review**

Whether an awardee's delivered equipment conforms to contractual requirements is a matter of contract administration which the General Accounting Office does not review under its bid protest function.

PROCUREMENT**Contractor Qualification****Responsibility****Contracting Officer Findings****Affirmative Determination****GAO Review**

An offeror's ability to meet its contractual obligations is a matter of the firm's responsibility for the contracting agency to determine before award. The General Accounting Office will not review an affirmative determination in that respect absent a showing of possible bad faith or fraud on the part of the procuring officials or that definitive responsibility criteria may not have been met.

PROCUREMENT

B-226103.2 Nov. 30, 1987

Competitive Negotiation

87-2 CPD 526

Offers**Competitive Ranges****Exclusion****Administrative Discretion**

Proposal may properly be excluded from the competitive range where the offeror's price is substantially higher than the price of other offerors submitting technically acceptable proposals and the agency determines that the higher-priced proposal has no reasonable chance for award.

PROCUREMENT

**Competitive Negotiation
Offers**

Evaluation

Information Submission

Contractor Duties

B-226103.2 Con't

Nov. 30, 1987

PROCUREMENT

Competitive Negotiation

Offers

Evaluation

Technical Acceptability

In negotiated procurements, since the agency's technical evaluation is based upon information submitted with the proposal, the burden is on the offeror to submit an adequately written proposal. A proposal with material technical informational deficiencies may be rejected as technically unacceptable where the proposal demonstrates that the offeror did not make the effort to adequately address the solicitation requirements.

PROCUREMENT

Competitive Negotiation

Technical Evaluation Boards

Bias Allegation

Allegation Substantiation

Evidence Sufficiency

Protest that members of the technical evaluation team were biased is denied where no evidence is presented to support the protester's bare allegation.

PROCUREMENT
Sealed Bidding
Bids

B-228219 Nov. 30, 1987
87-2 CPD 527

Responsiveness
Descriptive Literature
Adequacy

Under brand name or equal invitation for bids (IFB), contracting agency properly rejected as nonresponsive bid offering alternative product where bid lacked descriptive material necessary to determine whether offered product was equal to brand name.

PROCUREMENT
Sealed Bidding
Bids

Responsiveness
Determination Time Periods

In determining responsiveness of bid offering equal product under brand name or equal IFB, contracting agency improperly considered descriptive material furnished by bidder after bid opening where material was not commercially available before bid opening.

PROCUREMENT
Sealed Bidding
Bid Guarantees

B-228284 Nov. 30, 1987

Responsiveness
Liability Restrictions

Bid submitted with bid bond which stated it was for 20 percent of the bid price and contained zeros in the "amount not to exceed" block on the bond form was improperly rejected as nonresponsive because the only reasonable interpretation indicates that the bonding company intended to be bound to 20 percent of the bid price.

PROCUREMENT **B-228367 Nov. 30, 1987**
Socio-Economic Policies
Small Business Set-asides
Non-prejudicial Allegation

Protest of contracting officer's failure to notify protester of proposed awardee under a small business set-aside as required by regulation is denied since the Small Business Administration determined that the awardee is a small business concern for this procurement and therefore the protester was not prejudiced by the procedural deficiency.

PROCUREMENT **B-228431 Nov. 30, 1987**
Socio-Economic Policies
Small Business 8(a) Subcontracting
Applicability
Prime Contractors

Section 8(a) of the Small Business Act, 15 U.S.C. 637(a), concerning the award of subcontracts on a noncompetitive basis to socially and economically disadvantaged small business concerns is not applicable to a private corporation acting as a prime contractor for the government. The Act only applies to contracts between the Small Business Administration, as prime contractor, and a federal contracting agency.

PROCUREMENT **B-228568.2 Nov. 30, 1987**
Bid Protests **87-2 CPD 528**
GAO Procedures
Protest Timeliness
Apparent Solicitation Improprieties

A protest to the General Accounting Office (GAO) alleging an impropriety that was apparent on the face of an invitation for bids that is not filed until after bid opening is untimely.

PROCUREMENT **B-228568.2 Con't**
Contractor Qualification **Nov. 30, 1987**
Responsibility
Contracting Officer Findings
Affirmative Determination
GAO Review

PROCUREMENT
Sealed Bidding
Below-Cost Bids
Contract Awards
Propriety

Submission and acceptance of a below-cost bid are not legally objectionable. Whether a bidder can meet contract requirements in light of its low bid concerns the contracting agency's affirmative responsibility determination which GAO generally does not review.

PROCUREMENT **B-228607 Nov. 30, 1987**
Competitive Negotiation **87-2 CPD 529**
Requests for Proposals
Defects
Evaluation Criteria

Although contracting agency should have amended solicitation to express its need for a compact, portable medical monitoring device less restrictively, i.e., in terms of maximum volume rather than specific dimensions, its failure to do so did not prejudice the protester in the absence of any indication that the protester would have offered any product other than the one it did even if the specifications had been amended.

B-228607 Con't
Nov. 30, 1987

PROCUREMENT	B-228892.2	Nov. 30, 1987
Bid Protests	87-2	CPD 530
GAO Procedures		
GAO Decisions		
Reconsideration		

An untimely protest will not be considered under the significant issue exception to the bid protest timeliness rules since the issue raised is not of widespread interest to the procurement community.

PROCUREMENT

Bid Protests

GAO Procedures

Protest Timeliness

10-day Rule

B-229654 Nov. 30, 1987

87-2 CPD 531

Protester communication of alleged solicitation defects to agency, if considered to be a timely initial agency protest, is untimely filed at General Accounting Office (GAO) where the subsequent protest with GAO was not filed within required 10 working days after the closing date for receipt of proposals--the initial adverse agency action. If the initial communication by the protester to the agency was not a protest, the protest to GAO was not timely filed before the closing date.

MISCELLANEOUS TOPICS

MISCELLANEOUS TOPICS B-227438 Nov. 13, 1987
National Security/International Affairs
Real Property
Ownership
Determination
GAO Authority

It would not be appropriate for the General Accounting Office to determine questions about land ownership in the Republic of the Marshall Islands when the issue of ownership involves construction of land ownership law or custom substantially different from that regularly applied in the United States and the issue is in litigation.

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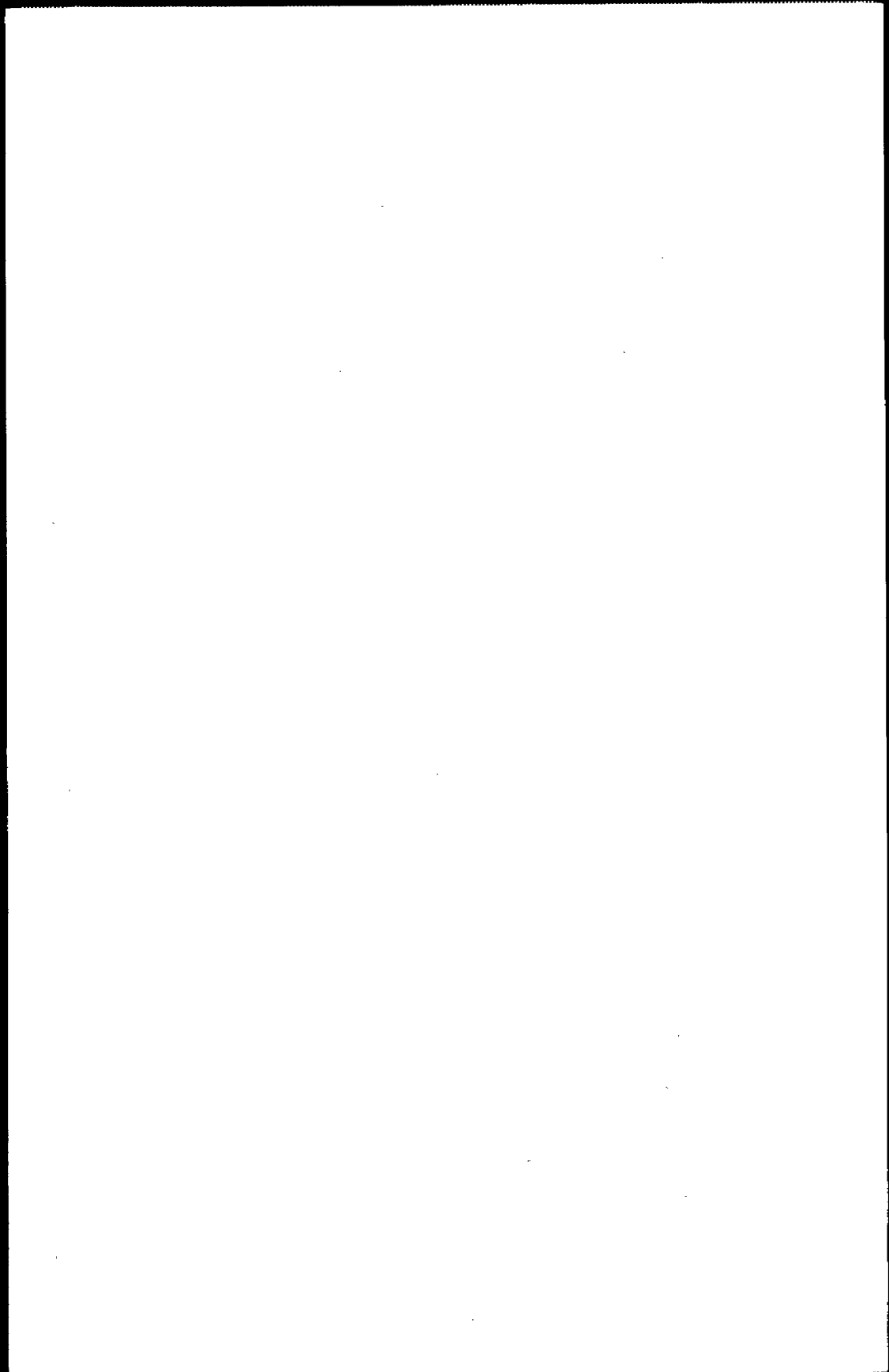
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